Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

COMMENTS OF QWEST CORPORATION

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SUMMARY

Qwest's recent merger with U S WEST, one of the original regional Bell Operating Companies, has "brought home" to Qwest the differences in service quality reporting requirements between ILECs, CLECs, and IXCs. This difference cannot reasonably be explained or justified by market conditions, federal regulatory needs or existing law. This proceeding represents an opportunity for the Commission both to comply with the dictates of Section 11 and to lift the burden of unnecessary and costly service quality reporting requirements from large ILECs.

While Qwest applauds the Commission for proposing, in this proceeding, to eliminate one ARMIS report and to reduce the number of service quality reports associated with another from 30 reporting categories to 6, the NPRM as currently written contains no meaningful analysis of the determination that regulations proposed to be retained are "necessary in the public interest as the result of meaningful economic competition between providers of service" (the standard set in Section 11(a)). And, it goes beyond proposals to repeal or modify the existing ARMIS reporting, misguidedly suggesting that new reporting elements be created.

If the intent and language of Section 11 is to be satisfied, ILEC service quality requirements must be based only upon a predicate finding of federal regulatory necessity in light of meaningful economic competition and the public interest. This standard requires that the Commission's inquiry be focused on "what rules are **necessary** for the federal jurisdiction to accomplish its statutory mandates," rather than "what rules can be eliminated" with minimal disruption to the *status quo.* This is quite a different approach from that taken in the NPRM which invites commenting parties to suggest creative reasons as to why the 6 proposed reports should remain in place (sometimes with material modifications) and others added.

As a first step, the Commission should determine what the federal interest is in the reporting elements under review and proposed to be retained. If there is no such interest, the reporting elements should be eliminated, leaving to other regulatory authorities the option of requiring such reporting.

Where there is a demonstrated federal interest, only those reporting elements proven as actually necessary should be retained. This would exclude reporting elements claimed to be "useful" or "helpful," particularly if the information can be secured through other means (e.g., through interested parties asking the service provider directly or through reporting in other regulatory jurisdictions).

This approach rightfully places the burden of justifying any ILEC service quality reporting requirements beyond the minimum on the parties advocating these requirements, including the Commission and its Staff. It violates both the letter and intent of Section 11 to place the burden of proving that existing requirements are unnecessary on the regulated party (i.e., the ILECs). It is the Commission that must make the Section 11(a) determination and the Commission who has the constituent obligation to effectuate a repeal or modification of regulations (under subsection (b)) that do not meet the "necessary" standard outlined in the statute.

Under such a review model, Qwest is of the opinion that the Commission has failed to demonstrate that any of the ARMIS reporting obligations under review in the NPRM should be retained. None have been shown to be "necessary in the public interest as the result of meaningful competition between providers" of interstate services in light of their historical price-cap regulation foundation. We urge the Commission to refocus its current inquiry to align it more in line with the statutory mandates under which the current review is being conducted.

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Qwest Corporation ("Qwest"),[1] through counsel and pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM" or "Notice"),[2] hereby submits its comments[3] in the Commission's purported comprehensive review of service quality reporting requirements under Section 11 of the Telecommunications Act of 1996 Act ("1996 Act" or "Act").[4] Qwest's recent merger with U S WEST, one of the original regional Bell Operating Companies, has "brought home" to Qwest the differences in service quality reporting requirements between ILECs, CLECs, and IXCs.[5] These differences are significant and cannot be explained or justified by

[1] On June 30, 2000, Qwest merged with U S WEST to become a multi-faceted telecommunications provider with a major presence as an incumbent local exchange carrier ("ILEC"), an interexchange carrier ("IXC") and a competitive local exchange carrier ("CLEC"). As such, the "new" Qwest is forced to balance many of the same competing interests in developing internal policy positions that the Federal Communications Commission ("Commission" or "FCC") grapples with on a regular basis in developing industry-wide rules.

[2] In the Matter of 2000 Biennial Regulatory Review -- Telecommunications Service Quality Reporting Requirements, CC Docket No. 00-229, Notice of Proposed Rulemaking, FCC 00-399, rel. Nov. 9, 2000.

[3] In addition to this submission, Qwest concurs in the comments that the United States Telecom Association ("USTA") submits in this proceeding, including its assessment of the continued need for specific reporting elements and reports.

[4] 47 U.S.C. § 161.

[5] See NPRM ¶ 29 noting that "Currently, only price cap LECs file [certain ARMIS] reports. We do not collect service quality data from small incumbent LECs, including those serving rural areas, nor do we collect this data from competitive LECs (CLECs)."

market conditions,[6] federal regulatory needs[7] or existing law. This proceeding represents an opportunity for the Commission both to comply with the dictates of Section 11 and to lift the burden of unnecessary and costly service quality reporting requirements even beyond the elimination of a single report and the reduction of reporting elements associated with one report from 30 categories to 6. In order to do this, however, the Commission must embrace both the spirit and the letter of Section 11 and abandon its traditional approach to reviewing regulatory requirements.

The Commission proposes to eliminate the ARMIS 43-06 Report (Customer Satisfaction), which Qwest supports. It also proposes to modify the reporting elements associated with the ARMIS 43-05 Report (Service Quality), reducing those elements from 30 to 6 (with proposals that the remaining 6 be modified in certain instances). Finally, the Commission unabashedly proposes to add new reporting elements to the ARMIS 43-05 Report, in total contradiction to the scope of a Section 11 analysis. Qwest comments on these proposals in more detail below. We also address the legal framework by which the Commission makes its biennial review proposals, finding that framework seriously flawed.

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[6] Continued regulatory mandates based on the number of "lines served" (id. ¶ 30), without something more than mere size as the differentiating factor, is highly questionable. The idea seems to be that "these guys are big and can afford to comply with the mandate." There is no consideration given to the fact that, for each dollar spent on regulation a dollar does not get spent on the customer. Such a regulatory approach impedes, rather than promotes, meaningful economic competition. See "Commissioner Furchtgott-Roth Issues Comprehensive Report on FCC's Biennial Review Process; Expresses Disappointment in Extent of 1998 Review, Offers Constructive Suggestions for Year 2000 Review," 1998 FCC LEXIS 6409, Dec. 21, 1998, (cited herein as "Commissioner Furchtgott-Roth Comprehensive Report") (noting that "The social costs of regulatory constraints that artificially increase costs and fail to provide meaningful consumer benefits and/or protections can be staggering . . . especially . . . in a rapidly changing and dynamic telecommunications environment," specifically noting the cost to consumers from the delay in introducing cellular technology; and that the Commission actually has "no clear idea how much its regulations cost American consumers" (at p.13)).

[7] See Section II, infra.

I. INTRODUCTION: THE LEGAL FRAMEWORK OF THE NPRM IS FLAWED

A. The Requirements Of A Section 11 Review

As a large ILEC, an IXC, and a CLEC, Qwest has a significant interest in the outcome of the Commission's review, particularly that it be conducted pursuant to the proper legal framework and standard. Without a clear understanding of the proper framework and standard, the remainder of the Commission's analysis fails to achieve the Congressional objectives associated with Section 11.

In beginning its biennial review associated with ARMIS Reports 43-05 and -06, the Commission asserts the overall purpose of the 1996 Act as being '"to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the deployment of new telecommunications technologies.'"[8] While that may be correct, Section 11 -- the specific statute under which the current proceeding is being conducted -- has its own specific purpose within that overall framework.

Section 11 has two subdivisions. The first requires a comprehensive review of Commission regulations every two years to aid the Commission in determining "whether any . . . regulation[ ] [is] no longer necessary in the public interest as the result of meaningful competition between providers of such service."[9] Regulations failing to meet this standard (i.e., the "Effect of [the Commission] Determination") shall be repealed or modified.[10] This mandated

[8] NPRM ¶ 1 (quoting from the Joint Statement of Managers, S. Conf. Rep. No. 102-230, 104th Cong. 2d. Sess. 1 (1996)). Moreover, the Commission acknowledges that it "must be vigilant to deregulate, where appropriate, consistent with this statutory goal." Id. ¶ 2.

[9] Id. And see 47 U.S.C. § 161(a).

[10] 47 U.S.C. § 161(b).

statutory regulatory reform regime changes, to a large extent, traditional notions of rulemaking proceedings.

As Commissioner Furchgott-Roth has accurately stated, subsection (a) of Section 11 places the "determination" job squarely at the foot of the Commission.[11] If the Commission cannot demonstrate that a rule is actually necessary then, according to subsection (b) of the statute, it must be repealed or modified. While notice and comment on the matters of repeal or modification are appropriate under subsection (b), those comments must necessarily be analyzed pursuant to the strong Congressional presumption that a failure to meet the standard outlined in (a) requires the repeal or modification of the regulation.

The current NPRM fails to track this legislative model except obliquely. While reciting the (a) standard (¶ 2), the remainder of the NPRM spends no time making the necessary "determination" regarding the need for the continued regulation. Rather, the remainder of the NPRM addresses primarily the "usefulness" of information either as currently reported or as potentially reformatted.[12]

This type of NPRM smacks of traditional rulemaking proceedings/analysis where every party is asked to comment on every possible position against a backdrop of tentative conclusions often based on generalized and presumed regulatory telecommunications expertise. It fails to reflect the Congressional presumption against unnecessary regulations contained in Section 11. A Notice of Proposed Rulemaking reflecting a Section 11 approach would focus on the federal necessity for the regulation (rather than consumer or state usefulness) and would reflect the understanding that a regulation **falls** unless the proponent of the regulation can, in fact, prove this

[11] See Commissioner Furchtgott-Roth Comprehensive Report, p.8.

[12] See, e.g., NPRM ¶¶ 1, 23, 26.

federal necessity in the public interest.[13] The NPRM fails to prove any federal interest in the continuation of reporting elements in many cases; and it certainly fails to demonstrate any federal necessity. For this reason, all of the ARMIS reporting elements under consideration within the NPRM should be eliminated. An analysis more consistent with the statute should ensue in the final Order in this proceeding.

II. THE NPRM FAILS TO DEMONSTRATE A **FEDERAL** REGULATORY **NECESSITY** TO RETAIN RULES

The current NPRM fails to reflect any "clear standard[ ] by which rules are evaluated."[14] While quoting from general comments about the 1996 Act or the specific statutory provisions, the NPRM fails to structure itself along the lines outlined above and mandated by Section 11 itself. Rather, it diverts from the standard outlined in the statute, i.e., whether a rule continues to be "necessary" when measured against "meaningful economic competition between providers," and branches out to other interesting -- but not material for a Section 11 analysis -- interests such as "consumer protection" and "aid to the states." This diversion is inappropriate since these

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[13] While it may be correct that, as a general matter, review of existing regulations are conducted in the absence of a presumption for, or against, the continued regulation (see Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co., 463 U.S. 29, 42 (1983) "the forces of change do not always or necessarily point in the direction of deregulation. . . . there is no more reason to presume that changing circumstances require the rescission of prior action, instead of a revision in or even the extension of current regulation"), Section 11 establishes the kind of presumption the Supreme Court found absent in that proceeding.

Compare Commissioner Furchtgott-Roth Comprehensive Report, "In at least one part of the 1996 Act, however, Congress' deregulatory mandate is unquestionable." (p.7), "the Commission must affirmatively determine that a rule is necessary in the public interest; otherwise, it must be repealed or modified" (p.9); "under Section 11, the FCC was ordered to deregulate" (p.10) "Congress' clear direction in Section 11 to deregulate the industry systematically is not given our full attention." (p.14) "Subsection 11(a) was adopted as part of an act especially intended to 'reduce regulation' and itself is in a section entitled 'Regulatory Reform,' [thus] it certainly would be reasonable, if not necessary, to construe the 'public interest' determinations in Subsection 11(a)(2) to require the FCC to presume a heavy burden against maintaining regulations." (p.17).

[14] Id. p.4.

latter-identified interests are not identified in the statute and because they fail to reflect a federal interest or necessity in the continuation of the regulation in question.

A. There Is No **Demonstrated Federal Interest** In Some Of The Considered Rules

The Commission spends little time in its NPRM assessing or discussing the extent of "meaningful economic competition" among service providers. If it did, it would have to focus on competition at the federal/national level with respect to interstate/federal services. Such services rarely touch consumers from an ILEC perspective (other than some toll services associated with "bubble LATAs"). That is, interstate services are generally access services, provided to other carriers and large business customers. These services, the Commission has acknowledged, are meaningfully competitive in nature and have warranted reduced regulation in the past.[15] Given this fact, reports such as ARMIS 43-05, Table I, clearly should be eliminated since the reports are no longer required to serve the public interest.[16]

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[15] There is no question that ILECs face significant competition in many parts of their business. In fact, the Commission explicitly recognized the magnitude of the competition facing large ILECs in interstate switched and special access markets when it adopted streamlined rules for introducing new services, geographic deaveraging (of services in the trunking basket), and a framework for granting price cap LECs greater pricing flexibility. See In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14221 (1999) (" Pricing Flexibility Order"). Under the Commission's pricing flexibility framework, price cap LECs are subject to lessened regulation and given significantly more pricing flexibility once they have met certain competitive-based thresholds.

The interconnection requirements in Section 251 of the 1996 Act have also had a dramatic impact on the competition that ILECs face and the way they conduct business. Unbundled network elements ("UNE"), resale discounts, number portability, and many other aspects of today's telecommunications marketplace did not even exist in the past. The current environment is a far cry from the days of an integrated Bell System when most customers were served by a single monopoly provider.

[16] See discussion below at III.B.

But other of the Commission's proposals appear to lack any demonstrated federal interest at all. Consumer protection associated with local exchange and intrastate services (and complaints about them) lack any demonstrated federal interest. There is no national or federal local exchange service. Consumers of those services would not logically look to the Commission for information about the services.[17] Moreover, the notion that the Commission is an appropriate "clearinghouse" for information associated with local exchange and intrastate services is totally misplaced. No Congressional delegation supports such a federal role. Therefore, barring any independent, federal interest in the services being offered, the quality of

[17] While the Commission has jurisdiction over purchases by some end users, from the perspective of numbers only, state regulatory authorities have jurisdiction over more "end user" customers (particularly residential "consumers" and small businesses) than does the Commission *vis-à-vis* specific carriers. Thus, a Commission desire to "give consumers" more information or information in a more helpful format (see NPRM ¶¶ 1, 6, 10, 11) is overreaching as a federal regulatory goal with respect to services beyond the federal jurisdiction. It cannot support the continuation, much less an expansion, of reporting requirements under a Section 11 analysis. Moreover, the Commission nowhere creates the logical link between the availability of information and a substantial access or review of that ARMIS information by consumers across the country. Even thousands of hits to a website do not demonstrate a significant access to, let alone understanding of, posted information.

"Consumer protection" goals (id. ¶¶ 3, 6, 10, 11) are only appropriate under such an analysis if the protection of the consumer is consonant with the exercise of federal regulatory authority in the first instance. In the NPRM (nn.14-15), the Commission likens its current desire to "get the information out" to its Truth-in-Billing initiative. Qwest questioned, in that proceeding, the "federal" interest in the Commission's proposals. See, U S WEST Communications, Inc., Petition for Relief from Two Truth-In-Billing Mandates Pending Conclusion of Reconsideration Process, CC Docket No. 98-170, filed July 19, 1999 at 11-13. While we took no appeal from the Commission's Orders in that proceeding (since there was little by way of "changes" required to accommodate the federal mandates), we continue to question the Commission's exercise of authority over local exchange carriers' bills to their end-user consumers, particularly for non-interstate services.

Moreover, federal regulatory goals do not extend to aiding and abetting carriers in serving their own commercial interests. Thus, "enhanc[ing] carriers' opportunities to distinguish their products based on quality" and considerations of "the need for companies to provide good service to attract and keep customers . . . as an incentive to maintain high quality service" (NPRM ¶¶ 3, 11) are not valid "regulatory" goals. Such does not assess the scope of "meaningful economic competition" -- the only criteria associated with Section 11(a) reviews -- but rather seeks to influence that competition.

those services is not material to the federal regulatory authority and federal rules associated with those non-material services should be repealed.[18]

B. Even If There Is A Federal Interest The NPRM Demonstrates No **Federal Necessity** For The Continuation Of The Rules

Even where the Commission might be able to demonstrate a federal interest in the service regarding which it seeks quality information about, the NPRM generally fails to demonstrate a federal need for the information (or stated differently, that the rule or regulation is "necessary" for the federal jurisdiction to exercise its duly delegated authority). The Commission has failed to demonstrate how its continued reporting requirements (the proposed, modified 6 elements associated with the ARMIS 43-05 Report) are necessary in the public interest on a going-forward basis.[19]

As discussed above, most of the proposals associated with the 6 reporting elements have to do with consumer (i.e., residential end user) information. And, the "need" for the information is often argued to be more along the lines of a facilitator of information sharing than federal necessity.

The fact that the Commission may find it "useful" for either it, the states, or even consumers to have information lodged with the Commission[20] does not correlate to a finding of federal regulatory necessity. Nor can "usefulness" provide the statutory authority for the

[18] While these reports, and the reporting elements, have long been a part of federal reporting pursuant to price cap regulation/deregulation, as the USTA points out, price cap regulation has been in place for over a decade. Qwest believes the Commission would be unable to demonstrate any promotion of service quality at the local exchange level because of the existence of these reporting requirements.

[19] While the NPRM asserts that existing service quality reporting requirements provide much valuable information to the Commission to perform its duties (see NPRM ¶ 1), this claim is questionable to the extent the information reported does not involve interstate services.

[20] Id. ("useful . . . to state and federal regulators"), ¶¶ 23, 26 (addressing information that "consumers would find useful").

Commission to act as an information "clearinghouse"[21] absent any statutory suggestion that such role is consonant with the exercise of federal authority.

For these reasons, the Commission should eliminate ARMIS Reports 43-05 and -06 in their entirety, as urged by the USTA, leaving service quality reporting to the states as they deem appropriate.[22] To the extent the Commission desires to secure information from those jurisdictions and utilize that information for its own "consumer protection" agenda, it can do that as its Staff and resources warrant and support.[23]

III. IN ORDER TO EFFICIENTLY AND EFFECTIVELY CONDUCT A REVIEW OF SERVICE QUALITY REPORTING REQUIREMENTS UNDER SECTION 11, THE COMMISSION MUST DEVELOP A STANDARD FOR DETERMINING "**FEDERAL** REGULATORY **NECESSITY**"

A. A Standard To Determine Federal Necessity Should Be Promulgated

While this instant NPRM addressing service quality reporting may not be the most significant biennial review which the Commission conducts, and may not involve a proposed continuation of a large volume of rules/regulations, it represents another in a series of

[21] Id. ¶¶ 5, 34, 36. The NPRM's suggestions that the Commission may expand existing requirements in response to requests from the states (id. ¶¶ 4-5) is not supported by the language of Section 11. Section 11 does not expand FCC authority; and it allows its exercise through rules and regulations only in those instances where the exercise is necessary in the public interest.

[22] In Attachment A, Qwest discusses but a few of the specifics of the Commission's proposals, generally buttressing the USTA arguments with more specifics.

[23] Qwest's current position on service quality reporting in a shared jurisdictional environment is clear: if the information is provided to the federal regulatory authority in substantially the form/content desired by state regulators, we urge that states refrain from adopting additional, duplicative reporting requirements. Compare the observation in the NPRM (¶ 4) that many states utilize information collected and reported through the federal jurisdiction with respect to their own service quality reporting initiatives. That is not to say, however, that the federal authority necessarily always asks for information relevant to it (as opposed to state interests); nor is it meant to suggest that reporting should continue at the federal jurisdiction beyond the need to have the information reported there.

proceedings involving Section 11.[24] As Commissioner Furchtgott-Roth has observed, and as continues to be the case, these proceedings generally lack any stated "principles for making public interest determinations under Subsection 11(a)(2)."

Determining what is necessary with respect to information collection means first assessing the situation and then deciding what information is actually needed to carry out the federal authority's delegated authority. It does not mean looking at what information is being reported (or could be reported) and then determining whether it still provides a "useful" piece of information.

The Commission still has an opportunity to get this rulemaking proceeding back on track. As a first step, in its Order in this proceeding, the Commission should make it clear that the role of a Section 11 biennial review is to eliminate all unnecessary rules/regulations (in this case, service quality reporting requirements). The "necessity" at issue should be a federal -- as opposed to a general or a state (or a local exchange services) -- regulatory necessity. Next, the Commission should devote its energies to developing a workable standard that is directed at determining the minimum set of requirements that is necessary for the federal regulatory authority to perform its statutory duties. Then, this standard should be applied to the Commission's existing service quality reporting requirements to derive the minimum set of requirements. As a part of this analysis, the Commission should examine other regulatory authorities with respect to the service quality reporting already being asked of carriers to see if

[24] The comments contained herein addressing the need for a standard for Section 11 reviews, as well as how that standard should be determined and applied was previously submitted in a somewhat different context and in somewhat different detail in comments filed in In the Matter of 2000 Biennial Regulatory Review Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers Phase 2 and Phase 3, CC Docket No. 00-199, authored by James T. Hannon, and filed Dec. 21, 2000. Whether

these requirements can be used in *lieu* of a separate Commission requirement (i.e., rendering a separate collection unnecessary). If they can, the minimum set of requirements should be reduced to reflect the use of these alternative sources of information. This approach, Qwest believes, would result in the elimination of both ARMIS Reports in their entirety.

B. The Standard Can Be Simple

While the Commission is in the best position to articulate its regulatory role and ultimately to determine the minimum amount of information that is necessary for it to perform its federal regulatory duties, Qwest believes that the following two-step process and criteria are sufficient to determine whether a service quality reporting requirement is "necessary" for purposes of complying with Section 11. Other similar models are available and incorporate similar ideas and concepts to those identified below.

The first step in this process -- something that may not be necessary in every biennial review proceeding but clearly is in the current one -- is to identify whether a federal interest exists in the first instance. That interest could be established in one of two ways and can be ascertained by answering the following questions:

1. Is the proposed information required to regulate ILECs at the federal jurisdiction? Or is the information more appropriately collected and reported (if necessary) at a state level?

2. Is the information required to protect consumers at the federal level due to harms suffered between carriers offering interstate services that operates derivatively with respect to the consumer?[25]

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addressing accounting reporting requirements or service quality reporting requirements, the principles remain salient and persuasive.

[25] As stated above, there are few services that the Commission regulates directly that are purchased by consumers. However, consumers do purchase services from carriers that, in turn, purchase services from other carriers. If the Commission can demonstrate that information about the carrier-to-carrier relationships are necessary and the production of the information would

If the answer to either of the above questions is "yes," a federal interest can be argued (although, as discussed more fully below that would not mean that a federal "necessity" would have been established). If the answer to both of the questions is "no," there is no federal interest in the first instance to support the reporting requirement. It should be eliminated or significantly modified.

The determination of what is "necessary" for the federal regulatory authority to carry out its delegated authority does not end with the above process. The results of the first step simply determine whether the information in question relates to a matter of interest to the federal regulatory authority, not whether the Commission should adopt its own specialized service quality reporting requirements. In order to identify "necessary" FCC-specific requirements, a second set of questions must be answered all directed to whether the information to be reported is actually (as opposed to theoretically) necessary.[26] While this second set of questions has been captured by other persons and entities,[27] Qwest provides another formulation below more tailored to data collections and aligned with data reporting obligations:

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have the added benefit of providing information about a down-stream consumer harm, the Commission could claim this as a federal interest.

[26] See Commissioner Furchtgott-Roth Comprehensive Report at p.9 ("A rule that is arguably in the public interest, but not necessary in the public interest must be eliminated or modified."; "a rule cannot merely be arguably 'in the public interest'; it must actually be in the public interest.").

[27] In Commissioner Furchtgott-Roth's Comprehensive Report on the biennial review process, he sets forth principles to educate a Section 11(a) analysis as including considerations of the following: "(i) the original purpose of the particular rule in question; (ii) the means by which the rule was meant to further that purpose; (iii) the state of competition in the relevant market at the time the rule was promulgated; (iv) the current state of competition as compared to that which existed at the time of the rule's adoption; (v) and, finally, how any changes in competitive market conditions between the time the rule was promulgated and the present might obviate, remedy, or otherwise eliminate the concerns that originally motivated the adoption of the rule." Id. p.11.

In the Report, he also references a "analytical framework that the Office of Plans and Policy ('OPP'), the Chief Economist, and the Competition Division of the Office of General Counsel provided to the bureaus and the Office of Engineering and Technology ('OET') in late 1997 for

1. Is the information or a reasonable proxy already being reported to or compiled for some other regulatory authority?[28]

2. If the information is needed and a reasonable proxy is not available from other sources, is the information required to be formatted/compiled/reported on a regular basis or is it sufficient to put ILECs on notice that they must be prepared to provide the data upon request?

3. If the information is required at regular intervals or upon request, what is the minimal level of detail (i.e., the highest level of aggregation) that is required for the Commission to perform its duties?

4. The net result of the above two-part test should be a minimal set of service quality reporting requirements that satisfies Section 11 and gives the Commission the information it needs to do its job without burdening ILECs with layer upon layer of redundant and unnecessary requirements.

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their use in connection" with biennial reviews (id.) which he characterizes as "excellent" (id. p.12). The Commissioner includes this OPP Framework Document as Appendix D to his Comprehensive Report. That document contains similar considerations to those proposed as appropriate considerations by the Commissioner himself. Significantly, the considerations are crafted in such a manner that it is clear that, at each stage, the proponent of the continued regulation is required to "prove its case." The considerations include "(i) Is the original or present purpose of the regulation still valid? If not, then why shouldn't the regulation be eliminated?; (ii) If a valid purpose for the regulation exists, how well does the regulation achieve the purpose? If it does not achieve its purpose well, then why shouldn't the regulation be eliminated?; (iii) Even if a regulation achieves its purpose, do the burdens it creates outweigh its advantages? What are the 'Pros' of the regulation? If the regulation is designed to protect against the exercise of market power, is there meaningful economic competition? If there is, then why doesn't that eliminate the need for the regulation? What are the 'Cons' of the regulation? Cons can include the direct costs and burdens on companies, regulators, customers, and taxpayers and the indirect costs of (a) preventing or slowing a firm from introducing and pricing new services or changing rates; (b) discouraging innovation; (c) forcing competitors to give each other advance notice of their plans; or (d) slowing the ability to respond quickly and flexibly to competition. Do the Pros clearly outweigh the Cons?; (iv) Even if the Pros outweigh the Cons, is there a less burdensome alternative that will produce similar benefits? and (v) Does the regulation overlap, interfere, or conflict with other regulations such that modification is warranted." Note: Nowhere in either of these review models is there room for adding new rules or regulations.

[28] As the Commission acknowledges, "[m]any state commissions are actively involved with service quality issues." NPRM ¶ 4; footnote omitted. And see Commissioner Furchtgott-Roth's observation that "redundant oversight has, by definition, no benefits." Commissioner Furchtgott-Roth Comprehensive Report, p.16.

Utilizing this model, Qwest believes only a single report, ARMIS 43-05, Table I, meets the "federal interest" and that that report fails the "necessary" aspect of the principles/standards because this type of information is provided directly by service providers to IXC (and other) customers. Thus the "costs" of providing the information to a federal regulatory authority outweigh the benefits to the affected customers. For this reason, the Report should no longer be required.

All the rest of the ARMIS reporting elements proposed to be retained fail to reflect a demonstrated federal interest. Moreover, there is no showing for their necessity at a federal level. For this reason, they should be repealed.

Finally, Section 11 reviews make no reference to adding new regulations (such as reports on call-holding times). Such should be done, if necessary in the first instance, through a separate rulemaking proceeding.

Below, in Attachment A, Qwest outlines in somewhat more detail our objections to continuing to report certain data elements.

IV. CONCLUSION

This proceeding represents an opportunity for the Commission both to comply with the dictates of Section 11 and to lift the burden of unnecessary and costly service quality reporting requirements from large ILECs. Qwest urges the Commission to take a "fresh look" at its current rules by establishing a reasonable standard for what is "necessary" for the Commission to

exercise its federal regulatory authority in today's increasingly competitive environment and eliminating all rules that do not meet this threshold test.

Respectfully submitted,

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ATTACHMENT A

Installation Intervals

As part of retaining this reporting requirement, the Commission proposes to move away from its current use of "average completion time" to something it calls "number of installation orders for service completed within a specified number of working days." NPRM ¶ 18. To the extent the Commission can demonstrate a federal interest and necessity for the continued reporting of this information in the first instance, Qwest opposes any change from the current "average" reporting model.

Qwest currently reports installation intervals at the state level, using more specific time frames than averages but not always calculating the intervals using the same temporal measurement.[1] Moreover, the term "working day" is not a defined regulatory term and can vary by entity desiring the information (and could vary by what the reporting entity deems a "working day" which might be different from that of the recipient of the information). If the Commission were to "define" "working day" for its purposes, it might well create an additional collection obligation on the ILEC -- a cost having no material public interest benefit. The Commission's current reporting structure utilizing "averages" avoids these problems.

Trouble Reports

The Commission proposes a modification to the existing reporting requirement for trouble reports on the grounds that multiple categories of different repair information (i.e., initial, repeat and subsequent trouble information) may be confusing to the average consumer.

[1] Qwest's internal company standard is three days. Different states have different specified number of installation interval reporting requirements, some based on days, some on working days: Arizona utilizes a 5 working day standard; Colorado a 150 calendar day standard; Iowa,

NPRM ¶ 19.[2] Qwest does not agree that this reasoning supports the continuation of the report since the trouble reports at issue relate to local exchange and intrastate services in large part. No federal interest, let alone federal necessity for reporting this information has been demonstrated.

Missed Repair Appointments

The Commission proposes that carriers report the total number of repair commitments and of those the number of missed commitments. NPRM ¶ 20. This information is not today reported in ARMIS and Qwest opposes its collection and reporting. Section 11 "regulatory reform" proceedings are not the proper venue for proposals involving additional or new regulations.[3] Moreover, this information reported without explanation can be misleading to the reviewer of the information.

Unlike installation information, repair data is not captured and categorized by what may have caused the repair to exceed the expected repair period. Other than the relatively broad category of "no access" (meaning that the repair person could not achieve access into the space necessary to achieve the repair), no other specific information as to why a repair commitment was not achieved is currently tracked. For this reason, even aggregate numbers can be misleading. For instance, if a repair has a 48 hour interval in Montana in December and a huge snowstorm hits, and the repair technician is stuck in the Qwest garage and is unable to make the

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Minnesota, Washington and Wyoming a 5 business day standard, Montana and Utah a 3 business day standard, New Mexico a 15 day standard, Oregon a 6 business day standard.

[2] The categories of trouble reports being eliminated are the "all other trouble reports" (row 146) and "subsequent-initial trouble reports" (row 147).

[3] When Section 11(b) references "modification" Qwest believes it means that a rule might have some sections retained (e.g., subsection (a), (c), (f)), some changed (e.g., subsection (g) and (h)) and some eliminated (e.g., subsection (b), (d), and (i)). This would not amount to a "repeal" of the rule, but a modification of it. Modification does not mean adding rules or reporting requirements that were not there before.

repair until 120 hours later, this would have to be reported as a "missed repair commitment," despite the extenuating circumstances.

To the extent the Commission persists in its determination to proceed with the collection of this data, Qwest proposes that the Commission accept the information in the aggregate (in order to accommodate a reasonable cost/benefit analysis). Furthermore, carriers should be permitted to freely "note" the information reported to accommodate reasonable explanations for the missed dates and to avoid potentially misleading conclusions about a carrier's overall service performance.

Repair Intervals

Today, carriers report repair intervals as averages in the ARMIS Report 43-05. The Commission proposes to continue measuring repair intervals and it seeks comment on whether it should require an average or some other measure. NPRM ¶ 22.

Assuming a federal interest or necessity in continuing to receive this data can be demonstrated in the first instance, the Commission should not change the current reporting obligation. No federal cost/benefit analysis supports a change to a more specific or detailed reporting structure. The period during which trouble reports get cleared (or troubles on the line get repaired) varies. Each state that measures such data has different criteria for when the clock starts and stops. While a few of Qwest's states use a "percent within a specified number of days" measurement approach, this is not a method supported by Qwest as being ideal. The precise measurement for this kind of repair interval reporting is best left to the states to determine if it is necessary and what weather and/or circumstance exceptions would apply in their state.

Service Representative Call Holding/Call Back Times

The Commission inquires as to whether carriers should report the length of time customers wait on hold before speaking to a customer service representative and the length of time a customer has to wait for a call back from a carrier. NPRM ¶ 23. This information is not currently included in the ARMIS data reported to the Commission. For that reason, proposing its adoption in a Section 11 proceeding is inappropriate.

Moreover, the Commission nowhere identifies where the federal interest or necessity is in having this type of information reported to it or how that interest is consonant with the goals of the Act to promote competition and depress regulation. There is no federal necessity for the reporting of this type of information. Most states require information on the number of calls answered within a specific amount of time, e.g., 60 seconds; and some states require the company to report the average time a customer is in *queue* (this more approximating the Commission's "how long the customer has to wait on hold before speaking to a representative"). This data is state specific and should not be required by the FCC.

None of the states require reporting on "call back" information, and Qwest is not even clear about what the Commission means by the use of this phrase. Currently this information is not tracked or measured which means creating it would be all cost for which Qwest can discern no federal interest or benefit. For these reasons, the Commission should not require the reporting of call back information.

Broadband and xDSL Service

The Commission seeks comment on whether to gather information and report about service quality in the provision of broadband and other advanced services. NPRM ¶ 26. This

information is not currently reported in the ARMIS reports and its proposed addition in a Section 11 proceeding is inappropriate.

Furthermore, the Commission has failed to demonstrate a federal interest that would support the necessity for this type of information. While the Commission notes that it has received consumer complaints suggesting that the process of initiating xDSL service can be time consuming, it provides no information on the volume of complaints, their persistence or how the costs of producing this information might be offset or outweighed by the benefit of the information.

Network Reliability Information

The Commission seeks comment on whether it should continue to collect the information contained in ARMIS 43-05, Table IV, on large scale outages as a complement to information collected by the Network Reliability Council; and whether competitive pressures to achieve network reliability in today's marketplace have sufficiently replaced the need for reporting of network reliability data. NPRM ¶ 40. Qwest supports elimination of Tables IV and IV.A. The current reporting required by the FCC's rules 63.100 (CC Docket No. 91-273) is more complete than the ARMIS requirements, since all wireline common carriers must report. The reports include information on transmission system failures and failures in other parts of the network, rather than just the local switch failures reported in ARMIS. Additionally, some states have established separate reporting thresholds to capture other data on outages that meets their needs, demonstrating further the lack of federal necessity for this data.

State Complaint Data

Whatever the rationale for the FCC's past requirement that large ILECs report state complaint data to it, the rationale no longer makes sense. There is no federal interest in this

information from the perspective of the exercise of federal regulatory authority. To the extent the FCC and the states want to share this information, they are certainly free to do so. However, the information in that case should come directly from the states, rather than from the carriers. NPRM ¶ 41. This would provide the Commission with a far more comprehensive picture of the "complaint landscape" because it would incorporate complaints filed against carriers which are not necessarily ARMIS-filing carriers.

In conjunction with this state-filing requirement, Qwest supports the Commission's proposal (NPRM ¶ 42) to eliminate the Customer Satisfaction Survey (ARMIS 43-06). There has been no demonstration that the continued existence of this Report is federally necessary.

Frequency of Reporting

The Commission seeks comment on whether it would better serve its consumer protection goals to collect service quality information more frequently than yearly. NPRM ¶ 33. The Commission makes no demonstration that more frequent reporting is federally necessary.

Qwest reiterates its concern over the dubious linkage between the federal interest in service quality and service quality reporting and consumer protection goals associated with local exchange services. Moreover, the Telecommunications Act creates a presumption, at least, that yearly reporting is in the public interest.[4] To justify deviating from this statutory requirement by adding more burdensome regulation within the context of a "regulatory reform" review requires a substantial showing by the Commission of the necessity for doing so. Its brief discussion in the NPRM does not rise to the level of such showing.

[4] 47 U.S.C. § 402(b)(2).

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused 1) the foregoing COMMENTS OF QWEST CORPORATION to be filed electronically with the FCC by using its Electronic Comment Filing System, and 2) a copy of the COMMENTS to be served, via hand delivery, upon the persons/entity listed on the attached service list.

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January 12, 2001

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